

## **Michigan Poverty Law Program Comments on SB 294 (bed bug treatment and its costs)**

SB 294 would permit, in the case of bed bugs, a **radical departure from the longstanding residential landlord-tenant public policy** in Michigan that landlords are primarily responsible for maintaining rental premises and keeping them fit for the use intended (i.e., bed bug free). SB 294 would allow tenants to be made mostly, if not totally, responsible for the costs of treating and controlling bed bug infestations without any evidence that the tenant was responsible for an infestation.

If enacted, SB 294 would become the **first tenant unfriendly bed bug law in the U.S.** Recent laws in other states (see, e.g., New Hampshire Rev. Stat. §540:13-e, eff. Jan 1, 2014; Maine Rev. Stat. §6021-A, eff. 2009, 2011) heighten landlord responsibility for dealing with bed bugs, including paying for the cost of treating them. **This bill also defies established science about bed bug behavior.**

### **SB 294 gives tenants get no new benefits, but tremendous new burdens**

While several provisions in SB 294 raise concern, its most pernicious is Sec. 1F.(3) (p. 6., line 14). This provision would permit a landlord and tenant to assign in a written agreement the responsibility for “costs associated with an infestation, including, but not limited to, costs of control or treatment.” Considering that almost all residential landlord-tenant leases are take it or leave it “adhesion” contracts written by a landlord and reflecting the parties’ hugely unequal bargaining power (which is only accentuated for tenancies involving low income tenants), it’s very easy to predict that tenants will usually be “assigned” responsibility for bed bug control/treatment costs.<sup>1</sup> Not only would the bill permit tenants being made solely responsible for bed bug control/treatment costs, it would deny them a say in the “control protocol” and subject them to eviction for a failure to comply with the protocol. Sec 1E.(5)(B)(p. 6 line 1)

As well, “if a tenant or the tenant’s guest causes an infestation”, the tenant would not only be responsible for paying for control/treatment costs for her rental unit, but also for “other areas where bed bugs have spread.” (Sec. 1F.(1). Bed bug behavior, as discussed below, makes determining causation extremely difficult. This difficulty strongly favors adhering to the general rule, followed by other states in their bed bug legislation, that landlords are primarily responsible for bed bug treatment and its costs.

By contrast to a tenant’s liability, a landlord would only be liable for an infestation or its control/treatment in the case of “gross negligence”. Sec. 1F.(2) The regime that Sec 1F would establish would not only be patently unfair and unreasonable, it would lack any sound public

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<sup>1</sup> Michigan’s Truth in Renting Act recognizes the overreach that adhesion contracts invite and prohibits several types of extremely one-sided residential lease provisions.

policy justification, again, as reflected by the recent legislation in other states that much more constructively, realistically, and fairly addresses bed bug responsibility issues.<sup>2</sup>

#### **Science about bed bugs doesn't support SB 294**

Among the many findings of the "Michigan Manual for the Prevention and Control of Bed Bugs" (the "Manual")<sup>3</sup> is that bed bugs can go for long periods (up to one year under optimal conditions) between blood meals. See, Manual, p. 4. The Manual also makes clear that an infestation in one apartment can spread to adjacent units or throughout a building. See Manual, p. 53. The dormancy and mobility of bed bugs makes determining causation or responsibility very elusive, and makes the obligations SB 294 would impose on tenants unfair and unsound, even more so for tenants in multifamily properties.

Further, this bill would create a financial disincentive to tenants reporting infestation. If a tenant knows she'll be responsible for the costs of bed bug control/treatment, she'll be less likely to report an infestation to her landlord, which would reduce the likelihood of an infestation being properly responded to. Another likely outcome of the bill's enactment would be an increase in evictions of tenants, especially low income renters, who couldn't afford to pay bed bug treatment costs, resulting in more homeless families in Michigan. And, because landlords would be stymied by the uncollectibility of many judgment defendants, their eviction wouldn't benefit landlords financially, but only increase their administrative costs.

Bed bugs are a real and significant problem in Michigan residential rental housing, among other locations. Unfortunately, SB 294 does not offer a sound, fair or effective remedy to this problem, and would put an unfair and disproportionate burden of the problem on tenants.

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<sup>2</sup> The bill would also preempt local ordinances concerning bed bug control/treatment (Sec. 1G.)

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[http://www.michigan.gov/documents/emergingdiseases/Bed\\_Bug\\_Manual\\_v1\\_full\\_reduce\\_326605\\_7.pdf](http://www.michigan.gov/documents/emergingdiseases/Bed_Bug_Manual_v1_full_reduce_326605_7.pdf) (Version 1.01 - September 2010) The Michigan Department of Community Health and the broadly representative Michigan Bed Bug Working Group published this highly respected and valuable 118 page resource. As its subtitle accurately states, it provides "[c]omprehensive guidance to identify, treat, manage and prevent bed bugs".